

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CHRISTOPHER GONZALEZ-
AGUILERA,

Plaintiff,

1:15-cv-01476-AA

v.

C. PETERS,

ORDER

Defendants.

AIKEN, District Judge.

Plaintiff, an inmate in the custody of the Oregon Department of Corrections, filed a complaint under 42 U.S.C. § 1983 alleging that the ODOC's rule describing the legal supplies made available to indigent inmates - OAR 291-139-0040(5)(a) - is unconstitutional on its face, because ODOC does not provide unlimited free postage to inmates for "consulting" with attorneys. In plaintiff's "Reply" (#10) he characterizes his claim as one for "First Amendment Free Speech (and) Association." Plaintiff seeks declaratory and

injunctive relief.

Defendant now move to dismiss (# 9).

The ODOC advances all costs to indigent inmates for required court or parole board filings. OAR 291-139-0040(5)(a). However it does not advance costs for general attorney correspondence under that rule. *Id.* However, indigent inmates are provided five post-paid envelopes per month. OAR 291-131-0015(9).

In order to state a constitutional claim for denial of access to the courts a plaintiff must demonstrate that he has suffered an "actual injury." Lewis v. Casey, 518 U.S. 343 (1996). "Actual injury" means "actual prejudice with respect to contemplated or existing litigation such as the inability to meet a filing deadline or present a claim. *Id.*; see also, Christopher v. Harbury 536 U.S. 403, 413-16 (2002).

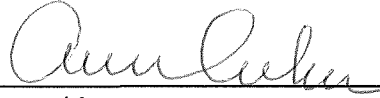
In this case plaintiff has failed to allege any actual injury. Plaintiff alleges that he is unable to write to attorneys to see if they are willing to represent him in a non-specific "civil action challenging the conditions of his confinement." Such an abstract injury is insufficient to state a constitutional claim. See, Rodriguez v. Cook, 169 F.3d 1176, 1179 (9th Cir. 1999) (rejecting "unlimited free postage" claim).

Defendants' Motion to Dismiss (#9) is allowed. The Clerk of the Court is directed to enter a judgment dismissing this action. Any appeal from this Order or judgment dismissing this action

would be frivolous and not taken in good faith. Therefore, plaintiff's *in forma pauperis* status is hereby revoked.

IT IS SO ORDERED.

DATED this 24 day of November, 2015.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken
United States District Judge